IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

W.A.No.660 of 2005 & W.P.No.24444 of 2004

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WRIT APPEAL No. 660 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 30/12/2004 in WP No. 24444 OF 2004 on the file of the High Court.)

Between:

1. M. Venkateshwara Reddy, S/o. Vengal Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
2. D. Mallareddy, S/o. Chinna Venkatasubbareddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
3. Merugu Gali Reddy, S/o. Kotireddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
4. Merugu Lakshmamama, W/o. Gali Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
5. Gade Guravareddy, S/o. Gurava Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
6. Merugu Srinivasa Reddy, S/o. Veera Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
7. Merugu Peda Ramireddy, S/o. Pitchi Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
8. Atchutha Gurunadha Rao, S/o. Venkateswarlu,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
9. Shivapuram Kotaiah, S/o. Mallaiah,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
10. Merugu Rami Reddy, S/o. Gali Nagi Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
11. Thota Chinna Narasimha Rao, S/o. Narasaiah,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
12. Perusomula Yellamanda, S/o. Polaiah,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
13. Beerella Ramanjaneyulu, S/o. Polaiah,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
14. M. Pakeeru, S/o. Papaiah,

R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
15. Chilukuri Suryanarayana Murthy, S/o. Suryanarayanamurthy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
16. Merugu Malla Reddy, S/o. Vengalareddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
17. Perusomula Sheshaiah, \S/o. Bhagavanlu,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
18. Thota Raghavaiah, S/o. Narsaiah,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
19. Iska Malla Reddy, S/o. Pentareddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
20. Merugu Lakshmi Reddy, S/o. Pitchi Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
21. Mergu Nagireddy, S/o. Veera Reddy,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
22. Mattavarthi Narayana, S/o. Easwararao,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
23. Beeralla Govindarajulu, S/o. Peda Ramalingam,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.
24. Chirumamilla Atchamma, W/o. Rangaiah,
R/o. Sivapuram Village, Vinukonda Mandal, Guntur District.

..... APPELLANTS

AND

1. Sri Siddi Malleswara Swamy Temple, Sivapuram (V), Vinukonda (M), Guntur District, represented by the Chairman of the Trust Board, Sivapuram Nageswara Rao, S/o. Kotilingam.
2. The Commissioner of Endowments, Boggulakunta, Tilak Road, Hyderabad.
3. The Deputy Commissioner of Endowments, Guntur District, Guntur.
4. The Assistant Commisisoner, Endowments Department, Guntur.
5. The District Collector, Guntur District, Guntur.
6. The Mandal Revenue Officer, Vinukonda Mandal, Guntur District.

.....RESPONDENTS

Counsel for the Appellant: Mr. C.V.MOHAN REDDY

Counsel for the Respondent No.1: Mr. K.S.MURTHY

Counsel for Respondent Nos. 2 to 6: G.P. for Endowments.

WRIT PETITION NO : 24444 of 2004

Between:

Sri Siddi Malleswara Swamy Temple, Sivapuram (V), Vinukonda (M),Guntur District, represented by Chairman of the Trust Board, Sivapuram Nagaeswara Rao, S/o. Kotilingam,
Aged 45 Years, Sivapuram (V), Vinukonda(M), Guntur District.

..... PETITIONER

AND

1. The Commissioner of Endowments, Boggulakunta, Tilak Road, Hyderabad.
2. The Deputy Commissioner of Endowments, Guntur District, Guntur.
3. The Assistant Commissioner, Endowments Department, Guntur.
4. The District Collector, Guntur District, Guntur.
5. The Mandal Revenue Officer, Vinukonda Mandal, Vinukonda, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly in the nature of Writ of Mandamus declaring the inaction on the part of R1 and R3 in taking steps to evict the encroachers from the land belonging to the petitioner temple wherein final orders have already been passed as unconstitutional and consequently direct the respondents to evict the encroachers on all the land belonging to the petitioner temple and put those lands under control of petitioner temple and pass such other or other orders as deemed fit in the interest of justice.

Counsel for the Petitioner: Mr. K.S.MURTHY

Counsel for the Respondents: GP FOR ENDOWMENTS

The Court made the following :

ORAL COMMON JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

This Appeal was filed before us with a leave application to challenge the order of the learned Single Judge passed on 30.12.2004 in W.P.No. 24444 of 2004. By the said order, learned Single Judge passed the following order:

> " A perusal of the record of this writ petition discloses that the orders of eviction from the lands belonging to the temple have been passed and they

became final. It is the duty of respondents 2 and 3 to resume the possession of the same.

In that view of the matter, there shall be an interim direction to respondents 2 and 3 to resume the possession of the lands belonging to Sri Siddi Malleswara Swamy Devasthanam, Sivapuram village, Vinukonda Mandal and the Superintendent of Police, Guntur, as well as respondents 4 and 5 shall provide necessary assistance in this regard.

Post immediately after Pongal Vacation, 2005."

Leave was granted by us on 10.3.2005 and the appeal was directed to be listed on 16.3.2005, and, till then, we directed suspension of the order of learned Single Judge and status quo to be maintained as regards possession as on that day. We also directed the Writ Petition to be posted before us. Writ Petition No. 24444 of 2004 has also been placed before us.

This judgment is meant to dispose of the Writ Appeal as well as Writ Petition No.24444 of 2004.

Sri Siddi Malleswara Swamy Temple, represented by its Chairman, Sri Sivapuram Nageswara Rao, filed Writ Petition in this Court on 27.12.2004 questioning the action of the official respondents 1 to 5 impleaded therein that they were refusing to take possession of declared temple lands even after final orders of eviction have been passed. It was alleged that in the year 2002, the land was declared as temple land and he was appointed as Trustee and later on was elected as the Chairman of the Trust Board and he was under the impression that the Endowments Act would empower them to see that temple properties are protected. Prior to the declaration, the temple had to fight the battle lonely and there was no statutory backing. After becoming the Chairman, he could put some efforts to identify the lands and submitted a representation regarding encroachment of the temple land. In paragraph 5 of the writ affidavit, it was alleged that notices were issued to the encroachers to evict them and since there was no money to conduct daily rituals in the temple, resort had to be made to submit the said representation. After notices were issued, enquiry took place and final orders were passed on 24.4.2004. One of the copies of such order dated: 24.4.2004 was filed, though the petitioner stated that there were 24 such orders passed covering 67 acres. Thus, the petitioner stated that Respondent No.3 is bound to take further steps to evict the encroachers and put the

land in the hands of the temple so that the same could be given out for lease by way of auction. Petitioner further stated that final orders were passed in April, 2004 and he had been running to the office of Respondent No.3 to get the orders implemented and that the encroachers had colluded with the local Sub-Inspector of Police, who wanted to pick him up and torture him in the police station. Therefore, he had no option, except to approach the Court and file the Writ Petition. Thus, according to the petitioner, no other proceedings were pending or taken up as regards the order of Respondent No.3, dated: 24.4.2004.

The order passed on 24.4.2004 by the Deputy Commissioner reads as under:

> "Whereas for the reasons stated in the annexure to this order, I have to believe that there is encroachment over the described below and belonging to Sri Sidda Malleswara and Chenna Malleswara and Ramalingeswara S.T., Sivapuram (V), Vinukonda (M),Guntur District caused on account of unauthorized occupation and that the same should be removed.
>
> Take notice that you are hereby directed to remove the said encroachment within thirty days from the date of receipt of this order and inform this office forthwith and if you fail to comply with the order as aforesaid you are liable to be proceeded with under sub-section (1) of Section 84 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987).
>
> Given under my hand and the seal of the Court, this the 24th day of April, 2004."

This order in O.A.No. 6 of 2004 was addressed to one Sri Merugu Pedarami Reddy, and, on the face of it, it would suggest that it is not an order of eviction as envisaged under the provisions of the Endowments Act, and, it nowhere says that any opportunity was afforded to the persons affected. Even as per the petitioner, similar orders were passed in 24 cases over 67 acres of land and may be the same order was passed in 24 cases, or, even same can be against 24 persons.

Without impleading the persons who are likely to be affected by the order, petitioner filed the writ petition. No reason was disclosed in the writ petition as to why the persons likely to be affected have not been impleaded in the writ petition and the application filed seeking leave would reveal that on coming to know of such orders passed by the Deputy Commissioner, they had already filed applications seeking to set aside the said order. In paragraph 10, it is stated that orders of eviction had not

become final and the writ petitioner had deliberately suppressed the factum of pendency of the applications filed as far back as in June, and July, 2004. Writ Petition was filed on 22.12.2004. If the applications for setting aside have been filed before the Deputy Commissioner, in which date of hearing was also fixed, of which writ petitioner is fully aware, knowing all these facts, writ petitioner approached this Court with unclean hands and did not implead the appellants as parties.

On one hand, the order which was sought to be enforced by the writ petitioner in the Writ Petition is bad in law having been passed without any notice to the persons concerned, and, on the other hand, there is deliberate suppression of material facts as regards the finality of the proceedings attached to the order of the District Collector. It is not disputed that the petitioner was aware of having filed applications for setting aside the proceedings, which were pending as on the date when the writ petition was filed. It was the duty of the writ petitioner to have disclosed these facts to the Court. It was also obligatory on the part of the petitioner to have impleaded the affected persons as parties to the writ petition.

We have no manner of doubt that with mala fide intention in order to gain undue advantage, the petitioner obtained orders from the learned Single Judge making false allegation that the order had become final. But for this misrepresentation, the learned Single Judge could not have passed the order without notice to the affected parties directing the respondents 2 and 3 in the writ petition to resume the possession of the lands belonging to the Devasthanam and the Superintendent of Police was also directed along with Respondents 4 and 5 to provide necessary assistance in this regard. We are of the view that the learned Single Judge ought not to have passed this order without hearing the respondents. Even the official respondents were not heard. Had notice been issued to the Deputy Commissioner of Endowments, perhaps, he would have explained that steps were not taken to dispossess the occupants because of the pendency of the application for setting aside the ex parte order and we were informed by the learned counsel for the appellants that in the grounds for setting aside the order, they had taken a plea that no notice was served upon them.

It is a case where we find that there is deliberate suppression of the facts in overreaching the Court and obtaining the orders ex parte. Consequently, we allow

the Appeal set aside the order of the learned Single Judge and will proceed to dismiss the writ petition with costs quantified at Rs.20,000/- to be paid by the petitioner. The costs will be deposited to the account of A.P. State Legal Services Authority.

We make it clear that the observations made by us in the writ petition will not come in the way of the Deputy Commissioner proceeding to take appropriate decision in accordance with law in the applications stated to have been filed by the appellants for setting aside of the proceedings dated: 24.4. 2004.

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DEVINDER GUPTA, C.J.

17.3.2005. _____

B.SESHASAYANA REDDY, J.

VR.

Rule nisi is made absolute as above.

Witness Sri Devinder Gupta, Honourable the Chief Justice, on this Thursday, the seventeenth day of March, Two Thousand and Five.

MEMORANDUM OF COSTS

Stamp for Vakalatnama

Advocate's Fee --------

Translation and Printing charges.

Quantified by the Court Rs. 20,000-00

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To be paid by the petitioner to

the A.P.State Legal Services Authority. Rs. 20,000-00

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To

1. The Commissioner of Endowments, Boggulakunta, Tilak Road, Hyderabad.
2. The Deputy Commissioner of Endowments, Guntur District, Guntur.
3. The Assistant Commissioner, Endowments Department, Guntur.
4. The District Collector, Guntur District, Guntur.
5. The Mandal Revenue Officer, Vinukonda Mandal, Vinukonda, Guntur District.

6. Two CCs to Government Pleader for Endowments, High Court Buildings, Hyderabad (OUT).

7) 2 CD copies

8) 1 CC to MR.MURTHY

Form-NIC-OGS/WP{JGK}